

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0587, State of New Hampshire v. David S. Hill, the court on February 24, 2006, issued the following order:

Following a jury trial, the defendant, David S. Hill, was convicted of criminal threatening. See RSA 631:4 (Supp. 2002) (amended 2003). In this order, we address his contention that the trial court erred by failing to instruct the jury on self-defense or justification or erroneously instructed the jury as to the effect of ignorance or mistake. We affirm.

The scope and wording of jury instructions are generally within the sound discretion of the trial court; reversal of a jury verdict is unwarranted when a jury charge fairly covers the issues and law of a case. State v. Hearns, 151 N.H. 226, 235 (2004). Any allegation of error will be evaluated by interpreting the disputed instructions in their entirety, as a reasonable juror would have understood them, and in light of all the evidence in the case. *Id.*

Following the parties' opening statements, the trial court ruled that the defendant had not pled self-defense. See Super. Ct. R. 101 (if defendant intends to claim any defense specified in Criminal Code, notice must be provided to court and prosecution). In his brief, the defendant asserts that because "by its argument and introduction of evidence at trial" the State attempted to amend its charging document to include the defendant's neighbor as a victim, he should have been allowed to raise certain defenses in response. Contrary to the defendant's assertion, however, the State did not attempt to add a new victim; rather, the State requested an instruction that self-defense was not an issue to rebut the defendant's assertion to the contrary in his opening statement.

Although the defendant also argues that the trial court failed to give a complete mistake of fact instruction, see RSA 626:3 (1996), we find no error. See State v. Chen, 148 N.H. 565, 569 (2002) (trial court's decision not to give jury instruction reviewed under sustainable exercise of discretion standard). A trial court must grant a defendant's requested jury instruction if there is some evidence in the record to support a rational finding in favor of that defense. RSA 626:3, I, provides: "A person is not relieved of criminal liability because he acts under a mistaken belief of fact unless . . . [s]uch mistake supports a defense of justification as defined in RSA 627." RSA 626:3, I (c). The defendant argues that his testimony that he thought his neighbor was at the door rather than a police officer when he opened it while holding a large Samurai sword with the blade pointed at the police officer justified a self-defense instruction. We disagree. The evidence in this case does not support a rational finding that the defendant,

locked in his apartment, reasonably believed that his neighbor was imminently going to use unlawful force against him. Accordingly, the trial court did not err in failing to fully include the language of RSA 626:3 in its instructions.

Affirmed.

BRODERICK, C.J., and DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**